



DEFENSE INTELLIGENCE AGENCY
WASHINGTON, D.C. 20301

U-7062/RSS-4B

20 Oct 1980

MEMORANDUM FOR THE CHAIRMAN, DCI SECURITY COMMITTEE COMPARTMENTATION SUBCOMMITTEE

SUBJECT: Final Report of the Secrecy Agreement Working Group

References: a. DIA memorandum, U-6812/RSS-4B, 19 December 1979, subject: Interim Report from Secrecy Agreement Working Group.
b. Paragraph 16.C., APEX Special Access Control System Government Security Manual, January 1980 (Galley Proof).

1. The strawman Nondisclosure Agreement for the APEX Special Access Control System, enclosure 1, is submitted for consideration by the full Compartmentation Subcommittee.

2. The attached agreement satisfies the factors discussed in reference a. and complies with the requirements of reference b. which necessitate a single nondisclosure agreement for APEX.

3. The working group, less NSA, feels the attached agreement should be the standard, single agreement for access to APEX materials and that agencies desiring uniquely restrictive agreements should execute addenda to the basic agreement.

4. The NSA representative opposed attempts to design a single agreement for universal application to the Intelligence Community. He considered it not possible to direct one document to the specific protections applicable to each agency or department. Nor did he believe it possible to develop a single document that would be binding on the prospective employee, the current employee, the military assignee and contractors' employee alike. The NSA representative strongly supported joint efforts to fashion a list of appropriately worded basic requirements to be incorporated into all agreements separately generated by each Intelligence Community member. The major objections of the NSA representative are at enclosure 2.

DIA review completed.

TALKING
ABOUT
APEX

5. Upon acceptance by the subcommittee, the proposed agreement at enclosure 1 should be submitted to appropriate legal counsel for review.

why
not
DO THAT!
FIRST!

2 Enclosures a/s

James W. Sewell
JAMES W. SEWELL
Major, USA
Chairman, Secrecy Agreement
Working Group

cc:

DCI SECOM (Mr. Paschal)
USAF/INSB (Mr. O'Neill)
NSA/M-503 (Mr. Rank)

NONDISCLOSURE AGREEMENT

APEX SPECIAL ACCESS CONTROL SYSTEM

1. I, _____, by signing this agreement, acknowledge
(Print full name)

ALWAYS
SOURCES
& METHODS
INVOLVED

that I have been told about and given access to certain classified information and intelligence sources and methods which were explained to me to be protected within the APEX Special Access Control System. At other places in this agreement, this information is called "this Sensitive Compartmented Information." This agreement applies to any additional information or programs, falling within the APEX Special Access Control System, to which I may later be granted access.

2. I have been told that if this Sensitive Compartmented Information becomes known to people who are not permitted by the United States Government to have it, this could cause serious harm to the United States of America.

3. I have been told how to handle and store this Sensitive Compartmented Information and how to find out which people I can show it to or talk to about it.

4. In return for being given access to this Sensitive Compartmented Information, I agree that I will never reveal this information, in any way, to any person who is not permitted by the United States Government to have it.

DOES
THIS
INCLUDE
BRIEFING
ON SPECIFIC
PROGRAMS?
19. There
may be
SPECIFIC
RULES
FOR A
FUTURE
ACCESS

5. I also agree to submit for review by the United States Government any information concerning intelligence subjects or activities which I want to publish or speak about. I agree to let the government review this information before I talk about it or show it to anyone who is not permitted to have this Sensitive Compartmented Information. I will not publish or speak about the information until I get written permission from the government to do so. I understand that the reason for the government's review of this information is to be sure that it does not contain any of this Sensitive Compartmented Information.

6. I understand that if I reveal this Sensitive Compartmented Information to anyone who is not permitted to have it, I may no longer be permitted to have access to the information myself and I may be required to return any of the information which I have. I also understand that if I do anything or behave in a way which shows that I might not be willing or able to protect this Sensitive Compartmented Information, the government may take away my access to it and require me to return any of the information which I then have. The government may take away my access at any time it judges such action to be in the best interest of national security and may do this without giving me notice or holding a hearing.

7. Also, I understand that if I reveal this Sensitive Compartmented Information to people who are not permitted to have it, this might violate the civil or criminal laws of the United States. I understand that a violation of civil law might cause me to have to pay the cost of any damage which resulted from my action. I understand that a violation of criminal law could result in my being fined or imprisoned or perhaps both.

8. If I reveal this Sensitive Compartmented Information without the permission of the United States Government, I assign to the United States Government any money or other thing of value which I receive or have already received for doing so, or any right to receive such money or thing of value.
9. I agree that this Sensitive Compartmented Information is now and will always be the property of the United States Government. I agree that I will return all of this information which I have or for which I am responsible when I am asked for it by an authorized representative of the United States Government. If I do not return it when I am asked, this too may be a violation of United States criminal law for which I can be punished.
10. Nothing said in this agreement means that the United States Government will give up any right it has to prosecute me if I violate the laws of the United States. Also, nothing said in this agreement means that I give up any basis for defending myself if the United States Government tries to prosecute me for violating the laws of the United States.
11. Each of the numbered paragraphs in this agreement stands by itself. If a court decides that any of these paragraphs do not apply to me, the rest of the paragraphs will still apply.
12. I have read this agreement and I understand it. I have asked any questions which I have about this agreement, the laws which apply to

violation of it, and the rules and regulations which govern the handling and storage of this Sensitive Compartmented Information, and my questions have been answered in a way I understand.

13. I am making this agreement in good faith, and I intend to live up to it.

SIGNATURE

ORGANIZATION

DATE

SOCIAL SECURITY ACCOUNT NUMBER

I witnessed the signature which appears above. I accept this agreement on behalf of the United States Government as a prior condition of this individual being permitted access to and use of the designated Sensitive Compartmented Information.

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this
01/01
FOR
CONTINUE?
?

SIGNATURE

PRINTED NAME

ORGANIZATION

DATE

Major Objectives to Strawman Nondisclosure Agreement

1. A secrecy agreement devoted solely to APEX ignores other designated intelligence categories, and does not address information which may be unclassified but is otherwise protected from disclosure by statute (e.g., 50 USC Section 403(d)(3) or Public Law 86-36). The agreement should explicitly be extended to include all matters of a sensitive or protected nature garnered by virtue of the employment which the agreement concerns.
2. The agreement, as written, appears to be legally insufficient in respect of the requisite contractual element "consideration." In order to be legally binding, a contract must have sufficient consideration. In order to be thus sufficient, there must be a legal detriment or benefit that has been bargained for and exchanged for a promise. "Access" does not appear to be adequate consideration. For employees, it is employment which serves as the basis of the bargain. For the prospective employee it is the position, not the access, which is sought. Since access appears insufficient to establish the requisite bargain element of "consideration," the agreement would not be binding.

WIRE
TRANSMISSION
ABOUT
APEX